

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEMOCRATIC NATIONAL COMMITTEE, : 18 Civ. 3501 (JGK)

Plaintiff, :

- against - :

THE RUSSIAN FEDERATION, et al., :

Defendants. :

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**NOTICE OF MOTION IN
SUPPORT OF DEFENDANT
WIKILEAKS’S MOTION
TO DISMISS THE SECOND
AMENDED COMPLAINT**

PLEASE TAKE NOTICE, that upon the annexed Declaration of Joshua L. Dratel, Esq., and all prior papers and proceedings herein, the defendant, WIKILEAKS, will move before the Honorable John G. Koeltl, United States District Judge for the Southern District of New York, at the United States Courthouse located at 500 Pearl Street, New York, at a time and date to be set by the Court, or as soon thereafter as counsel may be heard, for an Order dismissing the Second Amended Complaint on the following bases:

- (a) imposing liability on WikiLeaks for the conduct alleged against it in the FAC would violate the First Amendment;
- (b) as a “user or provider of an interactive computer service,” WikiLeaks is immune from civil liability pursuant to 47 U.S.C. §230;
- (c) the Racketeer Influenced and Corrupt Organizations Act (“RICO”) causes of action are deficient because they fail to allege sufficiently with respect to WikiLeaks several elements of a RICO violation, including (1) a RICO enterprise, and/or WikiLeaks’ operation or management of its affairs; (2) a pattern of

rackeering activity, including the requisite predicate acts; (3) cognizable injury to plaintiff's business or property; and (4) a RICO conspiracy;

- (d) the cause of action pursuant to 18 U.S.C. §2511 fails because the statute punishes only *contemporaneous* interception of communications, which is not alleged (and did not occur) here;
- (e) the cause of action pursuant to 18 U.S.C. §1836 fails because (1) it does not allege theft of a cognizable trade secret; (2) §1836 does not include conspiratorial or aiding and abetting liability; and (3) §1836 does not apply extraterritorially to the conduct alleged against WikiLeaks;
- (f) personal jurisdiction over WikiLeaks is lacking;
- (g) venue is not proper in the Southern District of New York;
- (h) any pendent state law claims should be dismissed pursuant to the abstention doctrine, and because they fail to state a claim; and

on the grounds set forth in the Memorandum of Law filed December 7, 2018 (ECF Dkt #208) by WikiLeaks and the Supplemental Memo of Law filed today by WikiLeaks, as well as the Memorandum(s) of Law filed today and previously on behalf of all defendants, and in any other defendants' motions, which Wikileaks joins to the extent they inure to WikiLeaks's benefit, as well as for any such other and further relief as to the Court seems just and proper.

Dated: New York, New York
4 March 2019

/S/ Joshua L. Dratel
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To: CLERK OF THE COURT

PLAINTIFF'S COUNSEL

ALL DEFENSE COUNSEL